

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
Board Chair

Kristin F. Rozansky
Board Director

State Personnel Board
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Meeting Minutes January 15, 2008

The State Personnel Board met in public session on Tuesday, January 15, 2008, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at 9:02 a.m. Board Members Roberto Corrada, Rich Djokic, Dana Shea-Reid, Robert Thompson, and John Zakhem were present in person.

Kristin F. Rozansky, Board Director; Assistant Attorney General Roxane Baca, Board Counsel; and Jane Sprague, General Professional III, were also present in person.

I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

Mr. Gonzales gave a report to the Board on several topics. With regard to total compensation, the Executive Director distributed a copy of the December 31, 2007 letter to Governor Bill Ritter and Representative Bernie Buescher in which he requested an additional \$9.98 million from his August recommendation for health, life and dental (HLD) and salary adjustments. Mr. Gonzales explained that the reason for the request is to bring the state's contribution to benefits to approximately 90% of prevailing market employer contribution to health premiums, and to offset mounting costs of these benefits, which cannot be borne by state employees alone. When asked by Mr. Zakhem how the Joint Budget Committee (JBC) is responding to this request, Mr. Gonzales stated that there have been preliminary meetings with the JBC, and JBC members are pleased that the state may be approaching 90% of prevailing market employer contribution to health premiums.

Mr. Gonzales also reported that 104 of DPA's 140 supervisors targeted for the mandatory supervisory training have participated in DPA's supervisory training program and that there is follow-up being done regarding the application of training to the workplace, for example, in the area of interpersonal relationships, what works, what does not work, etc. He stated that Town Hall meetings are in

the planning stage for the new year, the new personal leave policy is gaining wide acceptance among state employees based on the concept of managing one's own time for leave, and the access policy is being discussed with employee organizations. Legislatively, Mr. Gonzales mentioned that DPA has requested a bill regarding continuous "spending authority." With regard to employee organization partnerships, Mr. Gonzales stated that the Colorado State Patrol will be holding an election soon. Director Rozansky reported that she met with Department of Labor and Employment personnel and discussed the Board's Administrative Law Judges serving as mediators when there are disputes in formulating the partnership agreements. When asked by Mr. Zakhem if that would cause a conflict with the various parties, Ms. Rozansky stated that the Board is careful to avoid all such conflicts. As an example, she cited the Board practice of assigning a new merits ALJ when a Complainant files a second appeal.

Finally, Mr. Gonzales stated that the Ombuds program and C-SEAP, which recently has been moved into the Executive Director's Office with its Director reporting to Mr. Gonzales, are on-going programs through which employees may build trust in the personnel system.

II. REQUESTS FOR RESIDENCY WAIVERS

A. January 15, 2008 Report on Residency Waivers

Director Rozansky reported that the Department of Human Services has just submitted supplemental information regarding a request for the position of Nursing Home Administrator for Fitzsimons.

III. PENDING MATTERS

A. Cases on Remand

1. Randy Pfaff v. Department of Corrections, State Personnel Board case number 2004B112(C), Court of Appeals No. 05CA1937.

Following Board Counsel's summary of this matter, Mr. Zakhem moved that the Initial Decision of the Administrative Law Judge, with regard to Conclusions of Law 2 ("Complainant did not commit the acts upon which discipline was based") and 3 ("Respondent's demotion of Complainant was arbitrary and capricious and contrary to rule or law"), be affirmed, and Respondent is ordered to reinstate Complainant to the rank of Lieutenant retroactive to the date of demotion and to pay Complainant full back pay and benefits to the date of demotion; in addition, once the record is returned to the Board from the Court of Appeals, Board staff shall set a briefing schedule on the issue of the reconsideration of the award of

attorney fees and costs to Complainant, as mandated by the Court of Appeals. Mr. Corrada seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or other Final Orders of the Administrative Law Judges on appeal to the State Personnel Board this month.

V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

There were no Preliminary Recommendations of the Administrative Law Judges to grant or deny petitions for hearing before the State Personnel Board this month.

VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Norma Smith v. Department of Human Services, Disability Determination Services, State Personnel Board case number 2007B090 (December 7, 2007).
- B. Daniel R. Doering v. Department of Natural Resources, State Personnel Board case number 2008B018 (December 28, 2007).

The Board did not vote to review any Initial Decisions *sua sponte*.

VII. REVIEW OF THE MINUTES FROM THE DECEMBER 18, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the December 18, 2007 meeting as submitted. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS DECEMBER 18, 2007 PUBLIC MEETING:

- A. Timothy A. Smelser v. Department of Corrections, State Personnel Board case number 2008G027.

The Board voted to adopt the Amended Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- B. Gary Mason v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2008G017.

The Board voted to grant Respondent's Motion to Recuse Board Member Robert Thompson, to adopt the Preliminary Recommendation of the Administrative Law Judge, and to grant the petition for hearing solely on the issue of whether the Memorandum of Expectation issued to Complainant was a violation of the Whistleblower Act.

IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA

There was no report from Mr. Kaye this month.

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Budget and Expense Report
- Website hits: October - 123,289; November - 85,090; December - 73,328

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported she was cancelling Westlaw, which was costing the Board \$327 per month, and having all staff members join the Colorado Bar Association (CBA), which would save the Board approximately \$2,500 per year and provide staff members with all benefits of CBA membership, including use of Casemaker for legal research. Andrea Woods is back from maternity leave and is full-time as of January; the Director will be attending the Colorado State Managers Association's Legislative Lunch January 15, 2008; the Director has provided free training in DPA's supervisory training program; and there will be no docket the last week of August 2008 due to the Democratic National Convention in Denver. Finally, Board Counsel Baca stated that she is doing a Continuing Legal Education with the Colorado Civil Rights Division

Director the afternoon of January 15, 2008, which is open to anyone who is interested in attending.

- C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the December 18, 2007 Executive Session
- C. Other Business

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APPROVED THIS 19th DAY OF FEBRUARY, 2008.

Rich Djokic, Board Chair

Roberto Corrada, Member

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member